

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Complaint of Global NAPs, Inc. Against Verizon)
for Denial of Verizon New England, Inc. d/b/a)
Verizon Massachusetts for Denial of Issuance of)
Collocation Access Cards)

D.T.E. 03-29

May 27, 2003

HEARING OFFICER RULING ON GLOBAL NAPs, INC.'S MOTION FOR
CONFIDENTIAL TREATMENT

I. INTRODUCTION

On April 18, 2003, Global NAPs, Inc. ("GNAPs") filed with the Department of Telecommunications and Energy ("Department") a motion for confidential treatment of its response to information request DTE-GN 2-3 ("Motion for Confidential Treatment"). In DTE-GN 2-3, the Department requested that GNAPs provide copies of renewal or replacement identification and access card applications¹ that were returned by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") as incomplete. In addition, the Department requested that GNAPs provide a copy of Verizon's notification to GNAPs of the incomplete applications. GNAPs response to DTE-GN 2-3 contains copies of access card applications for four GNAPs employees, photographs of two employees, a cover letter from GNAPs to Verizon indicating that two applications are enclosed, correspondence from Verizon indicating return of an application due to GNAPs' use of an incorrect form, and a copy of an email transmission from Verizon informing GNAPs that certain applications were returned for missing information.

¹ In order for competitive local exchange providers ("CLECs") to access their physical collocation arrangements in Verizon's central offices ("COs"), CLEC employees must obtain collocation identification and access cards from Verizon. See http://www.verizon.com/wholesale/clecsupport/east/wholesale/html/pdfs/CollocationSecurityGuidelines-May_02.pdf. A collocation identification card includes a picture of the CLEC employee and must be worn at all times while in Verizon's facilities. Id. Verizon's COs are secured by either a keyed entry system, a card reader access system ("CRAS"), or a security guard. Id. For those COs that are secured by CRAS, an access card is required to gain entry. Id.

II. GNAPS' POSITION

In its Motion for Confidential Treatment, GNAPs argues that its response to DTE-GN 2-3 contains personal information about its employees, including employee photographs and social security numbers (Motion for Confidential Treatment at 2). GNAPs argues that such information constitutes “confidential, competitively sensitive, proprietary information” and is entitled to protection from public disclosure (id. at 1-2). GNAPs argues that the inclusion of such information in the public record would be an intrusion into the privacy of these employees in violation of Massachusetts law, and cause them to suffer harm (id. at 2). Verizon did not file a response to GNAPs’ Motion for Confidential Treatment.

III. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

the [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information;” second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party's Limited Liability Company Agreement, notwithstanding requesting party's assertion that such terms were competitively sensitive); see also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but "[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer"); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

IV. ANALYSIS AND FINDINGS

As an initial matter, I determine that there are some portions of GNAPs' response to DTE-GN 2-3 that clearly do not fall within the realm of confidential information, and, thus, are excluded from the protections provided by G.L. c. 25, § 5D. For example, the cover letter from GNAPs indicating that GNAPs had enclosed two employee identification and access card applications, and Verizon's responses that certain GNAPs' applications were being returned due to missing information or for using the wrong form do not disclose any information that could arguably be considered confidential, therefore, I will permit those portions of GNAPs' response to DTE-GN 2-3 to be placed on the public record. It is GNAPs' employee's identification and access card applications and the photographs of GNAPs' employees that deserve additional attention.

The four employee applications contain personal information such as the employees' social security numbers, dates and places of birth, and mothers' maiden names. G.L. c. 25, § 5D, permits the Department to extend confidential protection to "trade secrets, confidential, competitively sensitive or other proprietary information." In the past, the Department has recognized that personal information, such as an individual's social security number, is confidential. For example, in its proceeding concerning primary interexchange carrier ("PIC") freezes,² the Department recognized that use of unsecured e-mail containing personal information would not be a viable option for lifting PIC freezes. "[C]ertain customers may be unwilling to include in an unsecured e-mail the type of *confidential personal information, such as social security numbers* and account information, that is needed . . . to lift PIC freezes." D.T.E. 98-59, at 13 (emphasis added). In addition, when promulgating rules relating to the

² A PIC freeze restricts access to a customer's account by preventing the use of a PIC change request without additional authorization from the customer. Tel Save, Inc. v. Bell Atlantic, D.T.E. 98-59, at 1 (May 21, 1999).

provision of natural gas in the Commonwealth, found in 220 C.M.R. §§ 14.00 et seq., the Department specified that, while a third-party could obtain authorization from a customer to change to a new natural gas supplier, such authorization must include “appropriate verification data, such as the Retail Customer’s *date of birth and social security number* . . . provided, however, that any such information . . . shall not be used . . . or shared with any other party for [commercial or marketing] purposes.” 220 C.M.R. § 14.04(4)(c)(2) (emphasis added). Therefore, the Department has recognized that specific information, such as an individual’s social security number, date of birth, and other information of a personal nature, is entitled to confidential protection, and I will extend that protection to the four employee applications containing such information in GNAPs’ response to DTE-GN 2-3.

However, the two employee photographs included in the information request response do not raise the same concerns. GNAPs submitted the photographs to Verizon to include on identification badges. Unlike the personal information contained in the employees’ applications, the photographs on the identification badges are visible to others at all times when on Verizon premises, and there is no attempt at keeping them hidden from view. In fact, ensuring that the photographs are displayed is the essence of the security measure. Moreover, GNAPs does not adequately define the “harm” to the employees that GNAPs alleges would result from including the employees’ photographs in the public record of this proceeding. Therefore, I conclude that GNAPs has not proven the need for non-disclosure of the employee photographs, and this portion of GNAPs’ Motion for Confidential Treatment is denied.

V. RULING

Global NAPs, Inc.’s Motion for Confidential Treatment is granted in part, and denied in part, as discussed herein.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Date: May 27, 2003

_____/s/_____
Paula Foley, Hearing Officer